IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.55 OF 2005

Pravin Dahiyabhai Solanki. ... Applicant.
Versus.
The State of Maharashtra. ...Respondent.

Shri Kiran Makasare for the Applicant.

Shri K.V.Saste, A.P.P. for the Respondent-State.

Shri Ejaz Khan for C.B.I.

CORAM : ABHAY S. OKA, J.

DATED : 29th June, 2005.

P.C.:

1. By this Revision Application the Applicant who is an accused, has taken exception to the Judgment and order dated 15th February 2005 passed by the learned Special Judge. By the impugned Judgment and order the learned Special Judge rejected the Application made by the Applicant under section 311 of the Code of Criminal Procedure, 1973.

2. The present Applicant made an application under section 311 of the said Code on 11th January 2005. The prayer made in the said Application was that P.W.No.4, K.Karunakaran be recalled for further cross-examination by the Applicant. The only ground in the Application is that after going through the deposition which was recorded on 27th February 2004, some ambiguity was noticed and that this is the reason why further

cross-examination is required.

3. The learned Special Judge considered the Application on merits. It appears that after the said Application was filed before the learned Special Judge the Applicant changed his Advocate. The paragraphs 6 to 8 of the impugned order read thus:

> "6. The application recited that the sanctioning authority was examined. Then the name of the complainant Razzak was just "penned in". The application then recites that the sanctioning authority deposed in this case "and while going through his deposition some ambiguity is noticed and his further cross examination is required in the interest of justice and to remove ambiguity". It was for this purpose that recall of Mr.Karunakaran was sought.
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> 7. Now, in this matter atleast the brevity of the application is not its virtue. The application seems to proceed on the basis or so it seems it does that the witnesses already examined, cross examined and discharged can be routinely recalled by somewhat ritualistically penning and mouthing "interest of justice" as a cause to recall.

8. In fairness to Mr.Makasare be it noted that he also appeared ill at ease and may be even a little embarrassed by the frame of the application when Mr.Ejaz Khan assailed it on "ambiguity" aspect of the matter. But Mr.Makasare contended that were Shri Karunakaran recalled he would confront him with his deposition in some other matters which would in the end bear out that the sanction was invalid. He complained of a possibility of irretrievable prejudice in case this move failed because a valid sanction is the very foundation of a prosecution in corruption matters. In the light of the evidence of the Panch PW 6 Bagaitkar he also orally sought the recall of the complainant Razzak."

After making the aforesaid observations the learned Judge held that the Application was very vague and in fact cross-examination of P.W.4 does not appear to be so casual as the Application itself is.

4. After having heard the learned Counsel appearing for the parties, I find that no fault can be found with the view taken by the learned Special Judge on the basis of the Application made by the Applicant. For invoking powers of the Court under section 311 of the said Code

all that was said by the Applicant in the application is that some ambiguity was noticed in the deposition of P.W.4 and therefore, he needs to be further cross-examined. In my view the powers of the Court under section 311 of the Code could not have been invoked on the basis of such vague application. P.W.4 was examined on 21st December 2004 and subsequently further witness was examined and cross-examined. The application under section 311 of the Code could not have been maintained unless a specific ground for recall of the witness was set out with material particulars and the prosecution was put to notice of the ground on which recall of the witness was sought. For adjudication of the question whether power under section 311 could be invoked, specific grounds and material particulars on which recall was sought were required to be incorporated in the Application.

5. Thus on the basis of the Application which was made before the learned Special Judge, he was justified in rejecting the same. It appears that a contention was raised before the learned Special Judge that the Advocate for the Applicant before the trial Court has not incorporated the necessary particulars in the Application. Considering this argument, though I am rejecting this application, if there exists any ground for recall of P.W.4 by exercising power under section 311 of the said Code, it will be open for the Applicant

to make a fresh application setting out the grounds and material particulars. At this stage, the learned Counsel appearing for the Applicant pointed out that by adding the name of one more witness P.W.5 Abdul Rashid in the said Application, his recall was also sought in the Application. No fault can be found if the prayer as regards the said witness was not considered as there were no averments in support of the said prayer.

6. In view of the above, the Criminal Revision Application is rejected. However, notwithstanding rejection of this Application it will be open for the Applicant to make a fresh application under section 311 of the Code incorporating specific grounds on which the recall of the concerned witness is required. If such an application is made by the Applicant the learned Special Judge will obviously deal with the same in accordance with law and on its own merits.

Judge.